IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 750 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HASMUKHBHAI SHANKARBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 750 of 1993
MS BANNA S DUTTA for Petitioner
MR K.T. DAVE, APP, for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT
and
MR.JUSTICE A.L.DAVE

Date of decision: 13/12/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. Present appeal arises out of a judgment and order rendered in Sessions Case No.24 of 1992 by the learned Additional Sessions Judge, Kheda, at Anand Camp, on April 20, 1993, convicting the appellant for the offences punishable under Sections 302 and 323, Indian Penal Code and sentencing him to undergo imprisonment for life and rigorous imprisonment for seven days, respectively, for the said offences. The appellant was also imposed with a fine of Rs.500/- and was ordered to undergo rigorous imprisonment for 15 days in event of default in payment of fine.

2. The facts of the case can be narrated thus:-

2.1 A First Information Report came to be lodged by one Vishnubhai Shankerbhai Patel of village Kasodi, taluka Balasinor, district Kheda, with Virpur Police Station on September 7, 1991. It is recorded in the F.I.R. that the complainant's father had married twice. First he had married with Shantaben whose son is Jashubhai and they were staying separately. Shantaben had expired six days prior to the date of the F.I.R. The complainant has one brother named Bhikhabhai, another brother named Hasmukhbhai and a third brother named Bhanubhai. Bhanubhai stays at Umreth whereas the complainant, his brother Hasmukh and mother Kodriben stay at village Kasodi along with the father. Hasmukh happens be the accused-appellant. Hasmukh is a bachelor and he used to have quarrels with the family on this count. On that day, i.e. on September 7, 1991, at about 6 o' clock in the morning, the family members were having their cup of tea sitting together. At that time, Hasmukhbhai (appellant) asked the father as to whether they are going to arrange for his marriage or not. He then started pacing the floor out of anger. He got hold of a yoke. The family members, therefore, realising that he was very angry and might attack, started running helter skelter. The accused-appellant started chasing the complainant and mother-Kodriben and, ultimately, on catching Kodriben, gave a blow with the yoke on her head. This injury proved to be fatal for Kodriben. After causing injury to Kodriben, Hasmukh, i.e. the accused, stood there doing nothing. The complaint, therefore, raised shouts, responding to which several persons came. At that point of time, the accused-appellant rushed towards the father. At that time, father went to the house of Jeshubhai. Jeshubhai was present at his house and he, therefore, resisted the assault by accused-appellant in which he also sustained injuries. The F.I.R. was lodged in this regard by the complainant, offence was registered, police investigated into the case and, ultimately, filed charge

sheet in the Court of learned Judicial Magistrate, First Class, Balasinor, who in turn commmitted the case to the Court of Sessions. The case came to be registered as Sessions Case No.24 of 1992. The charge against the accused was framed at Ex.3. The accused pleaded not guilty to the charge. The accused requested for a defence lawyer at the State cost, which was provided to him.

2.2 After the trial, considering the evidence on record, the learned Additional Sessions Judge came to a conclusion that the prosecution could successfully establish the charges against the accused and, therefore, convicted him for the offence, as stated above. Aggrieved by the said judgment and order, the present appeal is preferred.

3. Ms. Datta, learned advocate appearing for the appellant, has taken us through the record and proceedings of the case. She submitted that the prosecution case, if properly evaluated, would indicate that the incident has occurred in heat of passion and without any pre-planning. The evidence indicates that the accused had a tendency of getting excited on the sensitive issue of his marriage. On that day also, he was provoked and had started pacing the floor in the house. The family members also sensed that he had become angry and was excited and, therefore, they started escaping from the house. This aspect is not considered by the Trial Court and the accused is convicted for the offence of murder. Ms. Datta submitted that there could not have been intention or even knowledge about the death or the act being likely to cause death of the mother. She submitted that the case, at the most, would fall under Section 304, I.P.C. She submitted that the accused is in jail for a long time and if he is awarded sentence to the extent that he has already undergone, the ends of justice would be met.

4. Mr. K.T. Dave, learned Additional Public Prosecutor, has opposed the appeal. He submitted that here is a case where a young man has brutally murdered his old mother and, therefore, the conviction may be upheld and the appeal may be dismissed.

5. Having regard to the contentions raised before us, we find substance in the argument advanced by learned advocate Ms. Datta appearing for the appellant.

6. Witness-Vishnubhai Shankerbhai, who is the complainant and brother of the accused, has been examined

at Ex.6. He states that while they were taking tea in the morning on the day of incident, the accused-appellant asked as to whether he is not to be got married and then he started shouting. The family members, therefore, gathered. The accused-appellant picked up a yoke. The family members, therefore, started running helter skelter. The accused chased the complainant and mother-Kodriben and, ultimately, gave a fatal blow on head of Kodriben. The accused also gave a blow on the hand, as a result of which Kodriben sustained fracture injuries.

7. During cross-examination, he admits that earlier, on 4 to 5 occasions, the accused had quarrels in the house on this count. He also admits that, at the time of the incident, accused inquired as to why the family is not arranging for his marriage and mother-Kodriben asked that how that can be done, as a result of which the accused got angry, he was excited and started running in the house. Because of his running in the house, the family members got frightened and they started running out of the house when the complainant was the first to get out of the house. His mother was following him. When he reached near the house of Shantilal, he heard a shout "Vishnu". Then he saw that accused had given a blow to the mother.

7.1 Likewise, if the deposition of Shankerbhbai Shivabhai, father of the accused and husband of the deceased (Ex.10) is seen, he admits in cross-examination that the accused-appellant gave up education after standard V. He admits further that because of the nature of the accused, nobody in the community was ready to give a girl in marriage to the accused. The nature of the accused was that he used to speak much. The witness further admits that at the time of incidence, the accused was angry and was excited over arranging for his marriage. He also admits that he was moving about in the house in an angry state of mind. Then he picked up a yoke and, therefore, the family members ran away.

8. Depositions of these two witnesses and other eye-witnesses, if considered in totality, we find that the prosecution has been able to establish the incident having occurred and the accused-appellant having given a blow with the yoke on head of the deceased which ultimately resulted into the death of deceased-Kodriben. But, at the same time, the evidence also indicates that the incident was not a pre-planned murder. The incident suddenly occurred. The accused got annoyed on the sensitive issue of his marriage and lost control over his

self. In that heat of passion, he picked up whatever was available, i.e. a yoke. Even the family members had sensed that the accused is so much angry that he is unable to control his mind and, therefore, they started running about. Under the circumstances, in our view, the case would fall within the purview of explanation 4 to Section 300, I.P.C. punishable under Section 304, I.P.C.

9. Considering the manner in which the incident has occurred, there could not have been any intention on the part of the accused to cause death of his mother. On earlier occasions also, there were such quarrels on this very point and, therefore, in our view, the case would fall under Part II of Section 304, I.P.C.

10. The appeal, therefore, deserves to be partly allowed. The conviction recorded by the Trial Court for offence punishable under Section 302, I.P.C. convicting the appellant is hereby quashed and set aside and, instead, the accused-appellant is convicted for the offence punishable under Section 304 Part-II, I.P.C. Having heard the learned advocates on question of quantum of sentence, in our opinion, the ends of justice would be met if the appellant is sentenced to undergo rigorous imprisonment for a period of 10 years. So far as imposition of fine is concerned, the sentence remains undisturbed. Likewise, the conviction and sentence for offence punishable under Section 323 is confirmed. Muddamal to be disposed as directed by the Sessions Court. Appeal stands disposed of accordingly.

[MS. R.M. DOSHIT, J.]

[A.L. DAVE, J.]

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